In the Supreme Court of the United States.

OCTOBER TERM, 1904.

GEORGE W. BEAVERS, APPELLANT,
v.
CHARLES J. HAUBERT, UNITED STATES MARSHAL, etc. } No. 354.

BRIEF ON BEHALF OF APPELLEE.

THE QUESTION OF LAW.

The question of law involved in this case is whether the Government *has the power* to institute and maintain removal proceedings under section 1014 of the Revised Statutes, for the purpose of removing George W. Beavers from the city of Brooklyn, in the eastern district of New York, to the District of Columbia, while there is still pending and undisposed of in the circuit court for the eastern district of New York an indictment against the said George W. Beavers.

STATEMENT OF CASE.

This case comes before this court upon an appeal from an order of the United States district court for the eastern district of New York, made and entered on

the 5th day of July, 1904, dismissing writs of habeas corpus and certiorari theretofore issued out of said court upon the petition of George W. Beavers, the appellant herein. (Rec., p. 114.)

It will be necessary, in the course of the discussion of this case, to refer quite frequently to the several indictments which have been returned against George W. Beavers by the United States grand jury for the eastern district of New York and the United States grand jury for the District of Columbia. In the month of July, 1903, three indictments were found against Beavers in the United States circuit court for the eastern district of New York, charging him with having violated sections 1781 and 1782 of the Revised Statutes. These indictments will hereafter be referred to as the "Brooklyn indictments." In the months of September and October, 1903, several indictments were returned against George W. Beavers in the supreme court of the District of Columbia. In one of these indictments he is charged with having violated section 5501 of the Revised Statutes. These indictments will hereafter be referred to as the "Washington indictments."

In the spring of 1903 George W. Beavers left the city of Washington, where he had been employed for a number of years in the Post-Office Department as superintendent of the Division of Salaries and Allowances in the office of the First Assistant Postmaster-General, and went to New York. When the Brooklyn indictments were returned against Beavers it appears

that he was residing, temporarily at least, in the city of New York, and thereupon proceedings were instituted by the Government under section 1014 of the Revised Statutes for the purpose of securing his appearance in the city of Brooklyn for trial. These proceedings were instituted long before the finding of the Washington indictments, and in the course of several months' delay, during which time the case was taken by appeal to the Supreme Court of the United States (194 U. S., 73), Beavers was compelled to appear before the United States circuit court for the eastern district of New York to answer the indictments pending in that court against him.

After the finding of the Washington indictments in the fall of 1903, and while the proceedings were in progress looking to the removal of Beavers from the city of New York to Brooklyn for trial, the Government instituted another proceeding before United States Commissioner Hitchcock of the southern district of New York for the purpose of securing the appearance of Beavers for trial in the District of Columbia upon the Washington indictments. Judge Holt, upon habeas corpus proceedings being instituted in behalf of Beavers, held that the arrest of Beavers upon the second warrant issued by the commissioner upon the Washington indictment should be vacated, for the reason that there was then pending a proceeding before the commissioner having for its purpose the ultimate removal of Beavers to the city of Brooklyn for trial. (In re Beavers, 125 Fed. Rep., 988.) Thus it appears that the Government was prevented in the

fall of 1903 from maintaining proceedings under section 1014 of the Revised Statutes, for the purpose of securing the appearance of Beavers for trial upon the Washington indictments.

When Mr. Beavers appeared in Brooklyn in the month of June, 1904, and before he could be tried in that jurisdiction upon the Brooklyn indictments, the Government instituted these proceedings before Commissioner Benedict in the city of Brooklyn. with a view to securing the appearance of Mr. Beavers for trial before the supreme court of the District of Columbia. United States Commissioner Benedict issued his warrant in June, 1904, for the arrest of Mr. Beavers upon one of the Washington indictments, and thereupon a writ of habeas corpus was applied for upon the ground that such a proceeding could not be maintained against Beavers during the pendency of the Brooklyn indictments. The circuit court for the eastern district of New York refused to follow the ruling of Judge Holt and dismissed the writ, holding in effect that although an indictment was pending against Beavers in the eastern district of New York, proceedings could be instituted under section 1014 of the Revised Statutes by the United States, looking to the ultimate removal of the defendant to the District of Columbia for trial.

Upon the conclusion of these proceedings before United States Commissioner Benedict, and before an order of removal could be applied for or obtained from the district court, counsel for Beavers made an application to the United States district court for the eastern district of New York for writs of habeas corpus and

certiorari, alleging that the prisoner should be discharged from the custody of the marshal, for the following reasons: First, because the commissioner was without jurisdiction to entertain such proceedings while the indictments were pending against Beavers in the eastern district of New York; and, second, upon the ground that the prima facie case made out by the Government had been overthrown by evidence produced in behalf of the defendant. The court dismissed the writs of habeas corpus and certiorari and remanded the prisoner to the custody of the marshal, to be held under the commissioner's warrant to await an application to the district judge for an order of removal to the District of Columbia.

This writ of habeas corpus having been issued before the district attorney had an opportunity to apply to the district judge for an order of removal, the authority of the district judge to make such an order is not directly involved in the consideration of this case. The question as to whether the district judge has that power is, however, so intimately connected with this case as to render it not only proper, but very essential, that such question be determined upon this appeal. Otherwise we may have the spectacle presented of another appeal to this court in practically this selfsame proceeding in order that the question may be determined as to whether the district judge is authorized under the law to make an order of removal in this case. We therefore respectfully submit that it is eminently proper that this court should consider this case as though an application had been made and the district

court had issued its order for the removal of Beavers from Brooklyn to the District of Columbia for trial, in order to prevent further unnecessary delay.

Case No. 355 on the docket of this court for the present term is an appeal from an order of the United States circuit court for the eastern district of New York, dismissing a writ of habeas corpus arising out of these same proceedings before United States Commissioner Benedict. The writ of habeas corpus was applied for and issued at an earlier stage of the proceedings, and but one question of law is presented by the record in that case, viz., as to whether the commissioner had jurisdiction to entertain the proceedings under section 1014 of the Revised Statutes before the Brooklyn indictments had been finally disposed of.

THE GOVERNMENT'S CONTENTION.

The Government contends that United States Commissioner Benedict had jurisdiction to entertain these proceedings under section 1014 of the Revised Statutes, even though an indictment was then pending against George W. Beavers in the United States circuit court for the eastern district of New York; that the order of the commissioner holding Beavers for appearance before the supreme court of the District of Columbia, and in default of bail that he be committed to the custody of the United States marshal to await the order of removal, was a perfectly valid and proper order, and one which said commissioner had full power to make; and further,

that the United States district judge for the eastern district of New York has full power and jurisdiction to issue an order for the removal of George W. Beavers to the District of Columbia for trial, whenever an application for such removal shall be made to said judge by the United States district attorney for the eastern district of New York.

And the Government further contends that the evidence produced upon the hearing before the commissioner in behalf of George W. Beavers was totally insufficient to rebut or overthrow the prima facie case established by the Government by virtue of the certified copy of the indictment and proof of the identity of the defendant.

I.

THE FACT THAT AN INDICTMENT IS PENDING AGAINST GEORGE W. BEAVERS IN THE UNITED STATES CIRCUIT COURT FOR THE EASTERN DISTRICT OF NEW YORK IN NO MANNER AFFECTS THE POWER OR THE RIGHT OF THE UNITED STATES GOVERNMENT TO INSTITUTE AND MAINTAIN PROCEEDINGS AGAINST SAID BEAVERS, UNDER SECTION 1014 OF THE REVISED STATUTES, FOR THE PURPOSE OF SECURING HIS APPEARANCE FOR TRIAL BEFORE THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

After the finding of the Washington indictments in the months of September and October, 1903, the Government instituted proceedings before United States Commissioner Hitchcock for the southern district of New York, for the purpose of securing the appearance of George W. Beavers for trial in the District of Columbia. At that time it will be remembered a sim-

ilar proceeding was pending before the same commissioner upon the Brooklyn indictments. United States District Judge Holt, upon the petition of George W. Beavers, issued a writ of habeas corpus for the purpose of testing the legality of the proceedings before the commissioner upon the Washington indictments. Judge Holt held that the commissioner had authority to issue the warrant for the arrest of Beavers upon the Washington indictment, but that "it would be the duty of the marshal not to execute it, but to hold it pending the decision of the commissioner in the proceeding for the removal of the defendant to the eastern district of New York." (In re Beavers, 125 Fed. Rep., 988.) The learned judge announced that he relied upon the authority of *Taylor* v. *Taintor* (16 Wall., 271), and concluded that inasmuch as there was pending a proceeding for the removal of Beavers to the eastern district of New York, the arrest under the second warrant issued by the commissioner should be vacated.

The Government contended that it was entitled to maintain two proceedings under section 1014 of the Revised Statutes against George W. Beavers, for the purpose of holding him to appear for trial in both the city of Brooklyn and in the city of Washington. If, however, upon the termination of such proceedings before the commissioner, it should appear that there was probable cause to believe that the defendant had committed a crime against the laws of the United States in the eastern district of New York, and also another

crime against the laws of the United States in the District of Columbia, it would then be the duty of the commissioner to hold the accused to bail to appear at different times in the future before each of said courts. If for any reason the accused should fail to give bail for his appearance, then the question would arise upon an application to the district judge for an order of removal as to which jurisdiction should first be given the opportunity of trying the defendant for the offenses charged. And again, if the accused should give bail for his appearance in Brooklyn and refuse to give bail for his appearance in Washington, and the United States should elect to ask for his removal to Washington for trial, and the United States district judge should grant such application, his sureties on the Brooklyn indictments would certainly be exonerated, and especially so if, by reason of his removal to Washington, the defendant should be prevented from appearing before the circuit court for the eastern district of New York to answer the indictments pending against him in that court.

This decision of Judge Holt's, vacating the proceedings on the Washington indictment, although clearly erroneous, and based upon dicta from the case of *Taylor* v. *Taintor* (*supra*), having no application to the case at bar, has afforded counsel for the appellant the only authority to be found in the books in support of his contention that a defendant can not be surrendered to another jurisdiction until the court acquiring jurisdiction has wrought its function. A brief considera-

tion of a few points will, in our judgment, be sufficient to make clear the principles of law governing this case:

(a) *This case in no manner involves a conflict of jurisdiction.*

There are numerous cases holding that, where there is a conflict of jurisdiction, the court first obtaining jurisdiction of either the person or thing is entitled to exercise that jurisdiction without interference from any other court until it has wrought its function. As was said in *Taylor* v. *Taintor* (*supra*), and quoted by Judge Holt in his opinion in the Beavers case: "It is a principle of universal jurisprudence that where jurisdiction has attached to a person or thing, it is, unless there is some provision to the contrary, exclusive in effect until it has wrought its function." We have no fault to find with this proposition of law, and there is no question but that the United States attorney for the eastern district of New York and the United States circuit court for that district would have been perfectly justified had they asserted their right to try George W. Beavers upon the Brooklyn indictments before surrendering him to the authorities of the District of Columbia. But it must be remembered that it is the sovereignty of the United States which is here seeking to assert and vindicate itself, and if the United States Government has the power to elect as to which of these indictments against George W. Beavers shall be first tried, it certainly is entitled to maintain proceedings for the purpose of securing the appearance of the defendant in two separate judicial districts preliminary to such

trial. So far as this case is concerned the action of the Government with respect to these removal proceedings is simply tantamount to an election as to which of these two sets of indictments shall be moved first.

(b) Whether a removal proceeding from Brooklyn to Washington would operate to discharge the sureties upon the bond of George W. Beavers for his appearance at Brooklyn for trial is a question which need not here be considered.

It is only necessary to point out that the sureties are in no manner parties to this controversy. Should the Government, in seeking to remove George W. Beavers from Brooklyn to Washington for trial, do that which would operate to discharge the obligation of the sureties on Beavers's bond for his appearance before the circuit court for the eastern district of New York, it is a matter which alone concerns the Government. The defendant can suggest no legal objection to being removed to the District of Columbia for trial, and the fact that he has not been tried upon the Brooklyn indictments affords neither the defendant nor his sureties legal ground for complaint or opposition to these removal proceedings.

(c) Every sovereignty has the power to waive its right to try a person accused of having committed an offense against its laws, and may elect to surrender such accused person, without his consent, to a demandiny State.

Taylor v. *Taintor*, 16 Wall., 366.
In re Hess, 5 Kans. Apps., 763.
State v. *Allen*, 2 Humph. (Tenn.), 258.

This right is necessarily inherent in every State and was distinctly recognized by Mr. Justice Swayne in delivering the opinion of the court in *Taylor* v. *Taintor*, (*supra*), when he said:

> If the principal is arrested in the State where the obligation is given and sent out of the State by the governor, upon the requisition of the governor of another State, it is within the third. In such cases the governor acts in his official character and represents the sovereignty of the State in giving efficacy to the Constitution of the United States and the law of Congress. If he refuse, there is no means of compulsion. But if he act, and the fugitive is surrendered, the State whence he is removed can no longer require his appearance before her tribunals, and all obligations which she has taken to secure that result thereupon at once, *ipso facto*, lose their binding effect.

If, therefore, the governor of one State has the power to surrender to another State a person charged with the commission of a crime in the State from which he is demanded, it would seem to follow *a fortiori* that the United States Government has the right to remove George W. Beavers from the city of Brooklyn, in the State of New York, to the District of Columbia for trial, without first being compelled to dispose of the Brooklyn indictments now pending in that district against him. In the case of a governor surrendering to another State a person charged with a crime, his act is regarded as the act of the sovereign State and would operate to release the sureties who had under-

taken to produce their principal before a particular court of the asylum State upon a day certain to answer an indictment pending in such court. In the case of the removal of George W. Beavers from the city of Brooklyn to the city of Washington, the United States attorney for the eastern district of New York, acting under instructions from the Attorney-General of the United States, represents the United States Government in its sovereign capacity.

The act of the district attorney in applying for an order of removal and the act of the district judge of the United States in making such order are the acts of the United States Government, and as such are entitled to recognition as the final decision of the Government with respect to the case which it has decided should be first prosecuted. Should these removal proceedings operate to prevent George W. Beavers from appearing in Brooklyn on the day set for the trial of the Brooklyn indictments, his sureties upon the Brooklyn recognizance would certainly be exonerated. But however that may be, we feel perfectly confident that the defendant has no legal right to have the Brooklyn indictments finally disposed of before proceedings can be maintained under section 1014 of the Revised Statutes looking to his removal to the District of Columbia for trial.

II.

THE EVIDENCE PRODUCED UPON THE HEARING, IN BEHALF OF THE DEFENDANT, WAS TOTALLY INSUFFICIENT TO OVERTHROW THE PRIMA FACIE CASE ESTABLISHED BY THE GOVERNMENT.

Upon the hearing of this case before United States Commissioner Benedict, the Government introduced a certified copy of one of the Washington indictments, together with proof of the identity of the defendant, and thereupon rested its case.

The indictment charges that George W. Beavers, while an officer of the United States, to wit, superintendent of the Division of Salaries and Allowances, in the office of the First Assistant Postmaster-General, in pursuance of a corrupt and unlawful agreement, did receive unlawfully from one W. Scott Towers, an agent of the Elliott & Hatch Book Typewriter Company, a draft for $350, with the intent on the part of him, the said George W. Beavers, that his decision and action with reference to a matter then pending before him in his official capacity should be influenced thereby to the detriment of the United States. (Rec., pp. 9, 10.) At the close of the Government's case, counsel for the defendant, Beavers, called certain witnesses in his behalf (Rec., pp. 76, 104), each of whom testified to certain facts relating more or less to the matters alleged in the indictment. None of the testimony offered, however, tended to rebut the case made out by the Government upon the certified copy of the indictment and proof of identity. George W. Beavers was himself called as a witness in his own behalf, and the proceed-

ings had before the commissioner with reference to the taking of his testimony tended very strongly, we submit, to establish the charge set forth in the indictment, and must have had great influence upon the commissioner in convincing him of the truth of the charges contained in the indictment.

When the defendant was called as a witness, his counsel requested that everybody leave the room in which the hearing was being held, except the district attorney, the accused, and his counsel, which request the commissioner declined to entertain. (Rec., p. 104.) After answering certain preliminary questions, Mr. Beavers admitted that on or about the 11th day of July, 1901, he received from W. Scott Towers a draft for $350, being the amount of money Beavers is charged in the indictment with having received as a bribe from Towers. (Rec., p. 105.) Beavers, however, denied that he had received it for the purpose of influencing his official conduct with reference to a matter relating to the Elliott & Hatch Book Typewriter Company, then pending before him. The explanation given by Mr. Beavers, as he remembered it, was that he had received this money as a loan from Mr. Towers, and that owing to Mr. Towers's acquaintance with the banks in Washington, he (Towers) frequently obtained drafts for Beavers on New York and elsewhere, and sometimes had notes discounted for Beavers. (Rec., p. 105.) After having testified to these facts, the district attorney attempted to cross-examine Beavers with reference thereto, and thereupon his counsel objected

to any cross-examination, upon the ground that the defendant took the stand merely for the purpose of making a statement, and to explain the facts alleged against him, in accordance with the provisions of section 196 of the New York Code of Criminal Procedure. When the district attorney again attempted to cross-examine Beavers, his counsel instructed him to decline to answer any questions that might be put to him by the district attorney upon cross-examination.

Not only did it appear to the commissioner, but it will appear with convincing force to anyone reading this record, that the Post-Office Department was purchasing from the Elliott & Hatch Book Typewriter Company certain book-typewriter machines, called "book-typewriters," for the use of the Post-Office Department, at the price of $200 each; that W. Scott Towers was the agent of this company, and that George W. Beavers, as general superintendent of the Division of Salaries and Allowances, in the office of the First Assistant Postmaster-General of the United States, was the officer of the Government whose duty it was to contract for or purchase machines of this character; and finally, it appears beyond controversy that George W. Beavers, while occupying such official position in the Post-Office Department, received from said W. Scott Towers a draft for $350. The Government contends that this money was given by Towers to Beavers for the purpose of influencing his official conduct with reference to the purchase of these machines. Beavers went upon the witness stand in this proceeding and

admitted that he received this money from Towers, but claimed that it was received, *as he remembered it, in the nature of a loan.* This was the only testimony produced by the defendant to rebut the case made out by the Government, and we submit that instead of rebutting the Government's case, it furnished additional proof of the charge set forth in the indictment that this money was received by Beavers from Towers for an unlawful purpose. The United States commissioner was certainly justified in finding from this evidence that a crime had been committed, as charged in the indictment, and that there was probable cause to believe that the defendant had committed the offense so charged.

In case this honorable court should be of the opinion that the record fails to show that the circuit court for the eastern district of New York *has waived jurisdiction* over the person of the defendant with respect to the indictments pending in said court, and that such *a waiver of jurisdiction is necessary as a condition precedent to the power of the Government to remove the accused* to the District of Columbia for trial, then, and in such case, we submit that the Government should be permitted *at this time* to dismiss the cases against the defendant in the circuit court for the eastern district of New York, *without prejudice* to the removal proceedings which are here under consideration. In other words, if this honorable court should be of the opinion that the accused *can not*

lawfully be removed to the District of Columbia for trial while indictments are still pending against him in the eastern district of New York, then the Government should be permitted *to dismiss the Brooklyn indictments* and have Beavers at once removed to the District of Columbia for trial, *under the proceedings heretofore instituted.*

Respectfully submitted.

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Assistant Attorney-General.